

**M e m o r a n d u m**

585.0320

To: Petition Unit (FJT)

Date: April 3, 1969

From: Tax Counsel (TPP:GJJ) - Headquarters

Subject: \_\_\_\_\_

This is in further reply to your memo dated January 9, 1969 concerning the propriety of the claim for refund filed by the above-mentioned taxpayer.

Restating the facts, "B" made a sale of an automobile at its Oakland place of business in 1968 to Mr. & Mrs. "M", California residents who resided at "C", Berkeley. The delivery of the automobile was to be made at Milano, Italy. "B"'s invoice included charges of \$98.85 (sales tax) and \$35 (vehicle registration fee) which were collected from the "M"'s. Delivery of the automobile was made in Milano on June 14, 1968 and the automobile entered California on November 12, 1968.

In our memo to you dated February 24, 1969, we advised that the section 6247 presumption arose at the time of sale and that "B" became responsible for the collection of use tax from "M" pursuant to the provisions of section 6203. However, as the "M"'s took delivery of the automobile approximately 5 months before they returned to California and had made a bona fide use of it outside of California, we regarded this evidence as rebutting the presumption of section 6247, thus relieving "B" of its obligation to collect use tax on this sale. We concluded that since sales tax reimbursement had been erroneously collected at the time of the sale and paid to the Board, "B"'s claim for refund should be granted subject to the condition that the refund be returned to the "M"'s.

In so concluding, we did not take into consideration the fact that in addition to paying sales tax reimbursement, the "M"'s also paid the vehicle registration fee. You ask whether this fact would alter the conclusion reached in our February 24 memorandum.

The fact that the "M"'s paid the vehicle registration fee does not alter the conclusion reached in our February 24 memo. In annotation 1916.10 we held that a purchaser of a vehicle outside the state was not liable for the California use tax on the vehicle unless he brought it into the state 90 days or less from the date he received out-of-state delivery. The vehicle was deemed not to have been purchased for use in this state when it was not brought into this state until over 90 days from the date of its purchase and delivery. As you will observe, the date of this anno. is February 27, 1959, while section 6248 of the Code, which refers specifically to a 90-day period, was not enacted until 1963. Thus, prior to the addition of section 6248, whether tax applies to

the vehicles delivered outside the state was dependent upon whether the vehicle was brought into California 90 days or less from the date of delivery. In view of the fact that the application of the presumption in cases involving vehicles has been dependent solely upon the 90-day period in determining whether the presumption of purchase for use in California will apply. As the "M"s used the vehicle for 5 months outside the state prior to bringing the vehicle to California, we conclude that the vehicle was not purchased for use in the state for purposes of section 6247 as well as for the purposes of section 6248.

JKM:smb [lb]